IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17175 of 2007
Date of decision 12. 11 .2007

AANEX Services .. petitioner

Versus

Union of India Respondent.

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. PK Sahu, Advocate for the petitioner

M.M.Kumar, J.

This petition is directed against the order dated 18.9.2007 passed by the Custom Excise and Service Tax Appellate Tribunal, New Delhi (for brevity 'the Tribunal') in Stay Application No. SYT/Stay/1902/2007-CU in Appeal No. ST 435/2007-CE. The Tribunal has upheld the order dated 18.5.2007 passed by the Commissioner (Appeals) wherein the prayer made by the petitioner for waiving the payment of pre-deposit has been partly accepted. It is appropriate to mention that the petitioner has availed service tax credit of Rs. 13,51,976/- on the basis of photo copy receipts issued by the Indian Air Lines in their favour. A demand was raised by finding that the petitioner was not entitled to the Cenvat credit and also found guilty of evading service tax by deliberately suppressing the facts as the documents produced by the petitioner were not specific making them eligible under sub rule 1 of Rule 9 of the Cenvat Credit Rules, 2004 (for brevity the Rules') for availment of cenvat credit. The documents in the shape of receipts did not contain address of persons receiving the same, description, classification and value of taxable service, registration number of service provider. Accordingly, it was held that there

was no prima facie case in favour of the petitioner nor the petitioner could establish the balance of convenience in their favour. It was further held that there was no proof of any financial hardship for waiver of pre-deposit under Rule 35 F of the Rules.

We have heard the learned counsel at a considerable length and find that the discretion exercised by the Commissioner (Appeals) as upheld by the Tribunal is based on relevant considerations. Once the discretion has been exercised in a particular manner it would be inappropriate for this Court to deviate from the same especially when the order has taken into account all relevant features. The writ petition is wholly without merit and is thus liable to be dismissed.

For the reasons afore-mentioned this petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

12.11.2007
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